



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

FTPS / FILE

JAN 7 2003

Mark Turner Holmes, Esq.
Deputy Attorney General
Department of Law & Public Safety
Division of Law
25 Market Street
P.O. Box 114
Trenton, NJ 08625-0114

Re: New Jersey Department of Human Services
Docket No. TSCA-02-2002-9112

Dear Mr. Holmes:

Enclosed is a copy of the Consent Agreement and Final Order ("CA/FO") in the above referenced proceeding signed by the Deputy Regional Administrator of the U.S. Environmental Protection Agency.

Please note that payment is due within forty-five (45) days of signature of the Final Order by the Deputy Regional Administrator. Please arrange for payment of this penalty according to the instructions given in that Order.

Sincerely yours,

Gary H. Murkin
Gary H. Murkin

Assistant Regional Counsel

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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In the Matter of :
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New Jersey Department of Human: CONSENT AGREEMENT
Services, : AND FINAL ORDER
:
Respondent. :
:
Proceeding under Section 16(a) of : Docket No.
the Toxic Substances Control Act. : TSCA-02-2002-9112
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PRELIMINARY STATEMENT

This administrative proceeding for the assessment of civil penalties was instituted pursuant to Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a) (hereinafter "TSCA"). The Complainant in this proceeding, the then Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency ("EPA") issued a Complaint and Notice of Opportunity for Hearing to the New Jersey Department of Human Services ("NJ DHS" or "Respondent") on November 27, 2001. The Complaint charged Respondent with violating Section 15 of TSCA, 15 U.S.C. § 2614, and regulations promulgated pursuant to 40 C.F.R. Part 761 relating to inspection, record-keeping, marking, registration and manifesting of polychlorinated biphenyls ("PCB") and/or PCB Transformers.

On or about January 24, 2002, Respondent filed its Answer to the Complaint disputing certain of the factual allegations contained therein, and also contesting EPA's penalty assessments.

EPA and Respondent have subsequently engaged in settlement discussions, and each has decided that settlement of this matter on the terms set forth in this Consent Agreement and Final Order is appropriate.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is NJDHS which owns, operates and controls the facility in and around Central Avenue, Greystone Park, New Jersey 07950.

2. Respondent's facility is located within Region 2 of the United States Environmental Protection Agency ("EPA").

3. Respondent is a "person" within the meaning of 40 C.F.R. § 761.3.

4. Respondent has owned, used and maintained, or stored for reuse or disposal "PCBs" and "PCB Items", as those terms are defined at 40 C.F.R. § 761.3, at Respondent's facility.

5. On or about June 24, 1999, August 4, 1999 and July 20, 2000 duly designated representatives of the EPA conducted inspections of and at Respondent's facility pursuant to Section 11 of TSCA, 15 U.S.C. § 2610 (hereinafter "the inspection") to determine Respondent's compliance with the EPA regulations and requirements pertaining to PCBs and PCB Items.

6. As a result of the inspections, EPA determined that Respondent had numerous violations of inspection, record-keeping, marking and registration requirements pertaining to its use on-site of 14 PCB Transformers and its manifesting off-site of PCB waste.

7. The 14 Transformers described in paragraph "6", above, constitute "PCB Transformers", and consequently "PCB Items" as those terms are defined at 40 C.F.R. § 761.3

8. Respondent represents that it is now in compliance with the EPA regulations and requirements pertaining to PCBs and PCB Items.

9. EPA and Respondent desire to enter into a full and complete settlement of the allegations in the Complaint without the need for further litigation.

CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 16 of TSCA, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22 (hereinafter, "Consolidated Rules"), it is hereby agreed by and between the parties hereto, that Respondent shall comply with the following terms:

1. Respondent shall immediately comply and maintain compliance with the 40 C.F.R. Part 761 regulations applicable to persons who own, use and maintain or store for reuse or disposal PCBs and PCB Items.

2. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, Respondent pursuant to 40 C.F.R. § 22.18(b)(2): a) admits the jurisdictional allegations of the Complaint, and b) neither admits nor denies the factual allegations made in the Complaint, and further neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Consent Agreement.

3. This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law pertaining to PCBs.

4. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of \$43,912.50, payable to the "Treasurer, United States of America". The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Such check shall be mailed to:

EPA - Region 2 (Regional Hearing Clerk)
P.O. Box 360188M
Pittsburgh, Pennsylvania 15251.

Respondent shall also send a copy of this payment to:

Gary H. Nurkin
Assistant Regional Counsel
Waste and Toxic Substances Branch
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway - Room 1623
New York, New York 10007

and

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 17th Floor
New York, New York 10007

Prior to submitting the Final Order at the end of this document for signature, Complainant shall complete and submit to Respondent a W-9 Vendor Questionnaire and a State of New Jersey Payment Voucher for penalty monies agreed to in this Consent Agreement. Thereafter, payment must be received at the above address on or before 45 calendar days after the date of the signature of the Final Order at the end of this document. The date by which payment must be received shall hereinafter be referred to as the "due date".

a. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

b. Further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31

U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

5. Respondent, the New Jersey Department of Human Services, has also agreed to undertake a Supplemental Environmental Project ("SEP"). This project involves the removal and disposal of the following 14 PCB Transformers that are presently in use at Respondent's facility:

	<u>Location</u>	<u>Transformer Type</u>	<u>Serial #</u>
1.	N.Main.Din.Hall	General Electric	5846461
2.	N.Main/2nd Tier	Westinghouse	623786
3.	N.Main/4th Tier	General Electric	E982155-63P
4.	S.Main/S.Din.Hall	General Electric	5846459
5.	S.Main/2nd Tier	General Electric	E982156-63P
6.	S.Main/2nd Tier	Westinghouse	6237975
7.	C.Main/C.Vault	General Electric	E376311-61P
8.	30 Ellis/Outside	Hevi-Duty	G167370
9.	CAC/Rm A-9	Westinghouse	PVC7160-01
10.	50 Ellis/Outside	Westinghouse	2PXC25470
11.	Abell/Outside	Westinghouse	3PXC17573
12.	Emp.Res./C.Vault	General Electric	E695770
13.	Voorhees/Outside	Westinghouse	1PXC17573
14.	Hill Lab/Outside	General Electric	H331291P73A

Within 24 months of the date this Consent Agreement is signed by the Deputy Regional Administrator, Respondent shall complete a project to remove and transport for disposal 14 PCB Transformers

that are currently in use at Respondent's facility. These 14 PCB Transformers shall be disposed of within 36 months of the date of the Deputy Regional Administrator's signature.

6. The "allowable" estimated cost for the removal and disposal of these 14 PCB Transformers is \$175,683. Respondent understands that "allowable" costs are those related only to removal and disposal of the PCB Transformers, and that any replacement costs are not covered by this Consent Agreement. Respondent shall provide EPA with documentation of the "allowable" costs made in connection with this SEP in the SEP Completion Report more fully described in paragraph "9" below.

7. Nothing herein is meant to waive Respondent's responsibility to ensure that all PCBs and PCB Items are disposed of within one year of the date they are removed from service for disposal, as required under 40 C.F.R. Part 761.

8. Prior to commencing the removal of the 14 PCB Transformers, Respondent shall notify EPA, in writing, of the date when it anticipates such work shall begin, and when it anticipates that such work will be completed. Such notification shall be submitted to the EPA at the address cited in paragraph "9", below.

9. Respondent shall submit an SEP Completion Report to: Chief, Pesticides and Toxic Substances Branch, Division of Enforcement and Compliance Assistance, U.S. Environmental

Protection Agency - Region 2, 2890 Woodbridge Avenue, Edison, New Jersey 08837 within 60 days of the date that the last PCB Transformer is disposed, or within 36 months of the date that the Final Order is signed by the Deputy Regional Administrator, whichever is earlier. The SEP Completion Report shall contain at least the following information:

- (i) a detailed description of the SEP as implemented;
- (ii) itemized costs, documented by copies of purchase orders and receipts or canceled checks;
- (iii) copies of all manifests, etc. describing transportation of the PCB Transformers and any related PCB waste to a TSCA approved facility for proper disposal; and
- (iv) copies of all Certificates of Disposal describing the proper disposal of the PCB Transformers and any related PCB waste at a TSCA approved facility

10. The SEP Completion Report shall also include a certification of the completion of the project which must include the following language: *"I certify that the information contained in or accompanying this document is true, accurate, and complete to the best of my knowledge and belief."*

11. Respondent agrees that failure to submit the SEP Completion Report or any other report or notification required by paragraphs "8" and "9", above shall be deemed a violation of this Consent Agreement and Final Order, and Respondent shall become

liable for payment of stipulated penalties pursuant to paragraph "13", below in accordance with the terms and conditions of paragraph "4" above.

12. Notwithstanding the foregoing, should Respondent determine that due to conditions beyond Respondent's control a temporary interruption in the removal and/or transport for disposal of the 14 PCB Transformers has become necessary, then Respondent shall immediately give notice of that determination to EPA. Such notice shall set out the reason(s) for the interruption and propose a schedule for the removal and/or transportation for disposal of the required PCB Transformers. Upon receipt and review of such notice, EPA shall then set a reasonable deadline for the removal and/or transportation for disposal of the PCB Transformers. Failure to give notice within three (3) business days of an interruption in the removal and/or disposal of the PCB Transformers as directed by EPA will cause the stipulated penalties described in paragraph "13" below, to become immediately due and payable in accordance with the terms and conditions of paragraph "4" above.

13. In the event that Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP described in paragraph "5" above, and/or to the extent that the actual expenditures for the SEP do

not equal or exceed the "allowable" estimated cost of the SEP described in paragraph "6" above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(i) If the SEP is not undertaken, Respondent shall pay a stipulated penalty to the United States in the amount of \$131,737.50.

(ii) If the SEP is satisfactorily completed, and Respondent spent at least 90 percent of the allowable estimated cost of the SEP, Respondent shall not pay any stipulated penalty.

(iii) If the SEP is satisfactorily completed, but Respondent spent less than 90 percent of the allowable estimated cost of the SEP, Respondent shall pay a stipulated penalty to the United States. Such penalty shall be calculated according to the following method:

$$\frac{(\$166,899) - \text{Actual Expenditures}}{\$166,899} \times \$131,737.50 = \text{Amt. Owed}$$

(iv) If the SEP is not completed satisfactorily, but Respondent can document that it made good faith and timely efforts to undertake the project, Respondent shall pay a stipulated penalty to the United States in the amount of \$9,410.00 for each of the 14 PCB Transformers that was not removed and disposed within the time frame described herein.

(v) For failure to submit the SEP Completion Report required by paragraph "9" above, Respondent shall pay a stipulated penalty in the amount of \$100.00 for each day after the report was originally due, until the report is submitted.

(vi) For failure to submit any other report or notification required by paragraphs "8" and "12" above, Respondent shall pay a stipulated penalty in the amount of \$50.00 for each day after the report was originally due until the report is submitted.

Stipulated penalties above shall begin to accrue on the day after performance is due ("stipulated penalty due date"), and shall continue to accrue through the final day of the completion of the activity. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of written demand by EPA for such penalties. If such payment is not made on or before the stipulated penalty due date, interest and a late payment handling charge will be assessed in the same manner and in the same amounts as specified in paragraph "4" above.

14. The determinations of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith timely effort to implement the SEP shall be in the sole discretion of EPA, which shall be exercised in a reasonable manner.

15. Respondent and the signatory for the Respondent both certify, as of the date of Respondent's signing of this Consent Agreement, that Respondent is not otherwise required, by virtue of any local, state or federal statute, regulation, order, consent decree or other judicial or legal document to perform the tasks specified in paragraph "5" above, of this Consent Agreement. Respondent's signatory further certifies that Respondent has not already received, and is not currently negotiating to receive, credit in any other enforcement action for any of these same tasks.

16. Any public statement, oral or written, made by Respondent making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of 40 C.F.R. Part 761".

17. If in the future EPA believes that any of the information certified to, pursuant to paragraphs "10" and "15" above, is inaccurate, EPA will so advise the Respondent of its belief and its basis, and will afford Respondent an opportunity to submit comments to EPA. If EPA then determines that a certification was inaccurate, Respondent shall pay an additional penalty in the amount of \$10,000 within 60 days of receipt of EPA's determination. This payment shall not preclude EPA from initiating a separate criminal investigation pursuant to 18 U.S.C. § 1001 et seq., or any other applicable law.

18. This Consent Agreement and Final Order is being entered into by the parties in full settlement of the Federal civil liabilities which might have attached to Respondent as a result of the specific allegations in the Complaint issued in this case. Respondent has read the foregoing Agreement and consents to its issuance and its terms. Full payment of the penalty in accordance with this Consent Agreement and Final Order shall not

affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

19. Respondent explicitly and knowingly consents to the assessment of the civil penalty and the stipulated penalties as set forth in this Consent Agreement and agrees to pay these penalties in accordance with the terms of this Consent Agreement.

20. Respondent explicitly waives its rights to request or to seek any Hearing on the Complaint or on any of the allegations therein asserted, on this Consent Agreement or on any of the matters herein stated, or on the accompanying Final Order.

21. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

22. The undersigned signatory for the Respondent certifies that he or she is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

23. The effective date of this Consent Agreement and Final Order shall be the date that it is filed with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.

24. Respondent consents to the service of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

25. Each party hereto agrees to bear its own costs and fees in this matter.

RESPONDENT:

BY: 


NAME: Anthony G. Lewis

(Please Print)

TITLE: Director Facilities Support

DATE: 12-18-02

COMPLAINANT:



RICHARD L. CASPE, P.E., Director
Division of Enforcement and Compliance
Assistance
U.S. Environmental Protection Agency -
Region 2

DATE: 12/30/02

FINAL ORDER

The Deputy Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement in the Matter of New Jersey Department of Human Services, Docket No. TSCA-02-2002-9112. The Agreement entered into by the parties is hereby approved, incorporated by reference herein, and issued, as an Order, effective immediately upon the date it is filed with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

DATE: 1/6/03



William J. Muszynski
Deputy Regional Administrator
U.S. Environmental Protection
Agency - Region 2
290 Broadway
New York, New York 10007

In the Matter of New Jersey Department of Human Services, Docket
No. TSCA-02-2002-9112

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy
by Hand:

The Office of the
Regional Hearing Clerk
U.S. Environmental Protection
Agency - Region 2
290 Broadway, 17th Floor
New York, New York 10007


Copy by
Pouch Mail:

Honorable Stephen J. McGuire
Office of Administrative Law Judges
U.S. Environmental Protection
Agency
Mail Code 1900L
1200 Pennsylvania Avenue, NW
Washington, DC 20460-2001

Copy by Certified Mail,
Return Receipt Requested:

Mark Turner Holmes, Deputy Attorney
General
Department of Law & Public Safety
Division of Law
25 Market Street
P.O. Box 114
Trenton, NJ 08625-0114

Dated: 1-7-2003
New York, NY



bcc: Mary Mears, 2CD-PAT
Linda Hall, 2DECA-PTSB
Donna S. Vizian-McCabe, 2FIN
Stephen J. McGuire, ALJ
Leonard Pappalardo, 2DECA-PTSB
Daniel Kraft, 2DECA-PTSB
Coles H. Phinizy, 2ORC-WTS
Gary Nurkin, 2ORC-WTS